DEPARTMENT OF STATE

Washington, D.C. 20520

OLC #78-2002/F

Pro/Leg

June 15, 1978

Mr. Ronald K. Peterson
Chief, Resources-Defense-
International Branch
Office of Management and Budget
Room 7208, NEOB
726 Jackson Place, N.W.
Washington, D.C. 20503

Dear Mr. Peterson:

This responds to David F. P. O'Connor's letter to you, dated today, commenting for Treasury and IRS on section 119(2) of S. 3076.

22 U.S.C. §2680a requires employees operating in a foreign country to keep the U.S. ambassador in that country "fully and currently informed" of their activities. We believe this language is sufficiently broad so that it would apply to Internal Revenue Service agents conducting investigations abroad, if it were not for the fact that section 6103 of the Internal Revenue Code was adopted subsequently.

Even though section 6103 is detailed, and was enacted against the background set forth in Mr. O'Connor's letter, we nonetheless believe that enactment of section 119(2) of S. 3076 would provide authority for Internal Revenue Service agents to brief chiefs of mission.

Our interest in the overseas activities of Internal Revenue Service agents is limited to activities that may be politically sensitive in the host country and may thus have potential consequences for the conduct of foreign relations. Even with respect to politically sensitive cases, it is unlikely that the Department would require specific information of the kind that it would be most troublesome for the Internal Revenue Service

to disclose. Indeed, there is arguably sufficient flexibility under the current law to permit at least some disclosure of politically sensitive information to ambassadors, but we believe that enactment of section 119(2) is required to provide the full flexibility that both agencies need.

We would not want the Administration's attention to be focused exclusively on the IRS. There may be other statutes, adopted in other contexts, that place unintended limits on the ability of U.S. employees operating abroad to keep our chiefs of mission informed of their activities. Enactment of section 119(2) will insure that 22 U.S.C. §2680a is fully implemented.

To re-emphasize the point that we made at Tuesday's meeting: the Department does not view section 119(2) as affecting either the legal relationships between 22 U.S.C. §2680a and the National Security Act of 1947 or the practical working relationships that currently exist between chiefs of mission and chiefs of station. We are concerned with other agencies, not with our relations with the CIA.

Kind regards.

Sincerely,

Lee R. Marks
Deputy Legal Adviser

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cc: [redacted]
Office of Legislative Counsel
Central Intelligence Agency

David F. P. O'Connor
Assistant to the Commissioner
Commissioner of Internal Revenue

COMMISSIONER OF INTERNAL REVENUE
Washington, DC 20224

JUN 15 1978

To Cy Allen 632-043
Rm 7208

Mr. Ronald K. Peterson
Chief, Resources-Defense-
International Branch
Office of Management and Budget
New Executive Office Building
726 Jackson Place, N.W.
Room 7208
Washington, DC 20503

Subject: Department of Treasury/Internal Revenue Service Comments on Section 119(2) of S. 3076 (State Department Authorization Bill)

Dear Mr. Peterson:

Section 119(2) of the above referenced bill would amend Section 16 of the State Department organic act to provide that, notwithstanding any other provision of law, Chiefs of Mission be fully and currently informed of all activities by employees of any agency within a foreign country.

The specific problem caused by this provision, as it relates to Treasury/IRS operations, is its application to Section 6103(a) of the Internal Revenue Code, which specifically requires that returns and return information (as defined in Sections 6103(b)(1) and (2)) be kept confidential except as otherwise authorized by other provisions of the Internal Revenue Code. Both S. 3076 itself and the language of the supporting Committee Report speak only generally about an ambassador's need for information. Moreover, the Committee report makes clear that the intent of the amendment is to clarify Congress' original intent in enacting Section 16 in 1974. The provision does

not deal directly with access to confidential tax return information, which Congress expressly saw fit to protect with the enacement of Section 6103(a) of the Internal Revenue Code. Congress enacted Section 6103(a) in 1976, more than two years after its enactment of Section 16 of the State Department organic act.

With this background, we would not be inclined to read the language of the current bill or the supporting Committee report as authorizing disclosure of tax information. As administrators, our principal concern is assuring that whatever rule is adopted in this area be made clear. Both civil and criminal sanctions attach to unauthorized disclosures of tax return information by employees of the Internal Revenue Service and other officials of government. Section 6103(a) of the Internal Revenue Code requires disclosures of tax return information to be expressly authorized in the Internal Revenue Code itself, and not in any other statute. We believe that this approach should be followed uniformly in order to assure that the rules authorizing disclosure are clear to our enforcement personnel.

We think it is also appropriate to note that the substance revision of Section 6103 in 1976 was undertaken in response to a clear Congressional concern regarding the extent to which tax returns and return information were to be made available to other agencies and departments of government for nontax purposes. The enactment of Section 6103 represented a change in the extent to which such data would be made available, and the purposes and circumstances of that availability. For example, the Attorney General can obtain access to most tax information for nontax purposes only under a court order from a United States District Court judge. Further, Presidential access to tax information was severely limited in Section 6103(g) of the Internal Revenue Code, which does not eliminate the President's

Mr. Ronald K. Peterson

ability to obtain access to such information, but places detailed restrictions upon the circumstances and conditions of that access. It seems anomalous to provide ambassadors with access to the same information under circumstances broader than those permitted for the President and the Attorney General. This is a matter which deserves your careful consideration.

With kind regards,

Sincerely,

David F. P. O'Connor

David F. P. O'Connor
Assistant to the Commissioner

Lee R. Marks
DEPARTMENT OF STATE, U. S. A.
WASHINGTON, D. C. 20520

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